IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Narayan Lal. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 400/2006

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Narayan Lal. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 393/2006

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Onkar Meena. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 540/2006

and

Pura Meena. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 610/2006

...

Date of Order: September 05, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Dr. Sachin Acharya, for the petitioner Narain Lal.
Mr. Ranjeet Joshi, for petitioners Onkar Meena and Pura Meena.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

These four criminal miscellaneous petitions under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) involve common questions of law and

fact and relate to FIRs No. 62/2004 and 63/2004 dated 16-6-2004, Police Station, Kanod, district Udaipur, lodged by petitioner Pura Meena in S.B. Criminal Misc. Petition No. 610/2006 and petitioner Onkar Meena in S.B. Criminal Misc. Petition No. 540/2004 and are between the same parties to the aforesaid first information reports, therefore, with the consent of the learned counsel for the parties, they are being heard and decided together.

Petitioner Narayan Lal in S.B. Criminal Misc. Petitions No. 400/2006 and 393/2006, seeks quashing of FIR No. 62/2004 and 63/2003 dated 16-6-2004 of Police Station, Kanod, district Udaipur, for the offences under Sections 420, 406, 467, 468, 471 and 504 IPC. The complainants Pura Meena and Onkar Meena in these first information reports, by two separate criminal miscellaneous petitions, seek direction of this Court to transfer the investigation which is being conducted by the Deputy Superintendent of Police Mr. Rajesh Bhardwarj, Circle Officer to the C.I.D. (C.B.) to be investigated by the officer not below the rank of Additional Superintendent of Police.

I have heard learned counsel for petitioner Narayan Lal as also the petitioners Pura Meena and Onkar Meena. I have also heard the learned Public Prosecutor and carefully gone through both the first information reports in question, as also the police case diary made available by the Public Prosecutor.

It is contended by the learned counsel for petitioner Narayan Lal that the land for which the offence alleged to have been committed does not fall within the territorial jurisdiction of Police Station, Kanod, district Udaipur, and, therefore, the Police Station, Kanod has no jurisdiction to investigate the matter. It was further contended that both the complainants Pura Meena and Onkar Meena executed power of attorney in favour of petitioner Narayan Lal, on the basis of which petitioner Narayan Lal transferred the land recorded in the names of the complainants by registered sale deed and, therefore, both the FIR have been registered by the respective complainants for ulterior motive and, therefore, to allow the investigation in both the FIR cases would be nothing but an abuse of the process of the Court.

Learned Public Prosecutor and the counsel for the complainants contended that the complainants, being old and illiterate poor villagers have been cheated by petitioner Narayan Lal on the pretext of providing them government financial aid and old age pension. Both the poor and illiterate complainants, being ignorant and illiterate old persons, affixed their thumb impressions on certain stamp and blank papers, as they were made to believe that on affixing thumb impressions on such papers, they will be given some financial aid and old age pension by the Government machinery. However, on those papers,

petitioner Narayan Lal got the power of attorney executed in respect of agricultural land belonging to the complainants and subsequently got the land transferred in favour of his brother Vinod Meena and thereafter got the land mutated in the name of Vinod Meena and subsequently it was sold to Karan Singh Sankhla by way of power of attorney and, thus, the agricultural land of the complainants has been grabbed by petitioner Narayan Lal and other co-accused, viz. Karan Singh Sankhla, Vinod Meena, Deepak, Jugal Kishore etc. The matter has been thoroughly investigated by the police and the police prima facie found the offences made out against petitioner Narayan Lal and other co-accused noticed above for the offences under Sections 420, 406, 467, 468, 471, 504 and 120-B, IPC.

On careful perusal of the case diary, in my view, prima facie there is sufficient material and evidence, including the evidence of hatching criminal conspiracy, forging the documents and using them as genuine, as also committing the offence of cheating.

It is settled law that FIR, when discloses cognizable offence, does not call for its quashing. In both the cases, the FIR lodged by complainants Pura Meena and Onkar Meena do disclose the cognizable offences. More so, after thorough investigation, including the report of the State Forensic Science Laboratory and the statements of witnesses recorded by the

police, I am of the view that there is material to proceed against present petitioner Narayan Lal and other co-accused, on the basis of which the police concluded to file Challan against petitioner Narayan Lal and co-accused noticed above.

So far as territorial jurisdiction is concerned, Section 177 of the Code provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 178 of the Code provides that where an offence is committed partly in one local area and partly in another, it may be inquired into by a Court having jurisdiction on any of such area. In the instant case, the complainants were induced at Kanod by petitioner Narayan Lal fraudulently and dishonestly making them to believe that they should affix the thumb impressions on certain papers for getting the government financial aid as also of old age pension and on such inducement, they affixed their thumb impressions on some stamps and other blank papers, on which petitioner Narayan Lal got power of attorney typed on those stamp and blank papers and got the same registered at Udaipur, and, therefore, from the evidence available on record, part of the cause of action arose at Kanod and part of cause of action arose at Udaipur and, therefore, the FIRs can be inquired into and tried by the Court having territorial jurisdiction over Kanod and, therefore, the contention raised by the learned counsel for petitioner Narayan Lal cannot be

accepted and it is rejected.

Learned counsel for petitioner Narayan Lal has failed to point out any ulterior motive for the complainants for lodging the FIRs, whereas from the evidence available on record, it is clear that the complainants, being old, illiterate and infirm villagers, by deceitful, dishonest and fraudulent manner, were made to sign some blank stamps and other papers luring them that for such thumb impression, they will be paid old age pension and the government financial aid and misused those papers by getting the power of attorney executed thereon, which the complainants never intended to do, had they been not misled.

In the State of Haryana Vs. Bhajan Lal, 1992 (Suppl.) 1 SCC 335, the Hon'ble Supreme Court held that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint.

In Medical Chemnicals & Pharma (P) Ltd. Vs. Biological E. Ltd. & ors., (2000) 3 SCC 269, the Hon'ble Supreme Court held that exercise of jurisdiction under the inherent powers

as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the fact of it do not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The truth or falsity of the allegations would not be gone into by the Court at this earlier stage. Whether or not the allegations in the complaint were true is to

be decided on the basis of the evidence led at the end. So the question is: can it be said that the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against accused.

In Union of India & B.R. Bajaj & ors., (1994) 2 SCC 277, the Hon'ble Supreme Court held that at the stage of FIR, the Courts should refrain from interfering when the FIR discloses the commission of a cognizable offence and statutory power of police to investigate cannot be interfered with in exercise of the inherent power of the Court.

Keeping in view the decisions of the Hon'ble Supreme Court, in my view, in both the cases, the first information reports do disclose commission of cognizable offence and after thorough investigation, by collecting the evidence, recording the statements of various witnesses and obtaining the report of State Forensic Science Laboratory, the police prima facie found the offences made out against petitioner Narayan Lal and co-accused noticed above and, therefore, it cannot be said that the case in hand is an exceptional case. It is settled law that the power under Section 482 of the Code are to be exercise sparingly and cautiously in exceptional and rarest of rare cases.

In the circumstances, therefore, no case for quashing the FIRs is made out and, therefore, both the criminal miscellaneous petitions filed by petitioner Narain Lal deserve to be dismissed.

So far as the criminal miscellaneous petitions filed by complainants Pura Meena and Onkar Meena are concerned, both the first information reports have already been investigated thoroughly and the apprehension of the complainants that the matter will not be investigated fairly by the investigating officer, is unfounded. In view of the decision of the Hon'ble Supreme Court, a direction regarding investigation to be carried out by by an office of a particular rank, not below the rank of additional Superintendent of Police, cannot be given. The Hon'ble Supreme Court in Popular Muthiah Vs. State represented by Inspector of Police, (2006) 3 SCC (Cri.) 245, held that when a power under sub-section (8) of Section 173 of the Colde of Criminal Procedure is exercised, the Court ordinarily should not interfere with the statutory power of the investigating agency. It cannot issue directions to investigate the case from a particular angle or by a particular agency. However, if the investigation still continues, it is open for the complainant-petitioners to file the cassettes, if any, regarding the conversation alleged to have been recorded in the cassette. More so, the matter has been thoroughly investigated including the investigation on a so-called cassette given by the complainants and, therefore, both the petitions filed

by the complainants are devoid of any merit and deserve to be dismissed.

In the result, all the four criminal miscellaneous petitions lack merit and are, therefore, dismissed.

(H.R. PANWAR), J.

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